

Amendment No. 1 to HB3257

Watson
Signature of Sponsor

AMEND Senate Bill No. 3076

House Bill No. 3257*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 39-13-511, is amended by deleting the section in its entirety and by substituting instead the following:

(a) A person commits the offense of indecent exposure who:

(1) In a public place, as defined in § 39-11-106, or on the private premises of another, or so near thereto as to be seen from the private premises:

(A) Intentionally:

(i) Exposes the person's genitals or buttocks to another; or

(ii) Engages in sexual contact or sexual penetration as defined in § 39-13-501; and

(B) Reasonably expects that the acts will be viewed by another and the acts:

(i) Will offend an ordinary viewer; or

(ii) Are for the purpose of sexual arousal and gratification of the defendant; or

(2)

(A) Knowingly invites, entices or fraudulently induces the child of another into the person's residence for the purpose of attaining sexual arousal or gratification by intentionally engaging in the following conduct in the presence of the child:

(i) Exposure of such person's genitals, buttocks or female breasts; or

(ii) Masturbation; or

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(B) Knowingly engages in the person's own residence, in the intended presence of any child, for the defendant's sexual arousal or gratification the following intentional conduct:

(i) Exposure of the person's genitals, buttocks or female breasts; or

(ii) Masturbation.

(3) No prosecution shall be commenced for a violation of subdivision (a)(2)(B)(i) based solely upon the uncorroborated testimony of a witness who shares with the accused any of the relationships described in § 36-3-601(5).

(4) For the provisions of subdivision (a)(2)(A) or (a)(2)(B) to apply, the defendant must be eighteen (18) years of age or older and the child victim must be less than thirteen (13) years of age.

(b)

(1) "Indecent exposure", as defined in subsection (a), is a Class B misdemeanor, unless subdivision (2), (3) or (4) applies.

(2) If the defendant is eighteen (18) years of age or older and the victim is under thirteen (13) years of age, indecent exposure is a Class A misdemeanor.

(3) If the defendant is eighteen (18) years of age or older and the victim is under thirteen (13) years of age, and the defendant has any combination of two (2) or more prior convictions under this section or § 39-13-517, the offense is a Class E felony.

(4) If the defendant is eighteen (18) years of age or older and the victim is under thirteen (13) years of age, and the offense occurs on the property of any

public school, private or parochial school, licensed day care center or other child care facility during a time at which a child or children are likely to be present on the property, the offense is a Class E felony.

(c)

(1) A person confined in a penal institution, as defined in § 39-16-601, commits the offense of indecent exposure who with the intent to abuse, torment, harass or embarrass a guard:

(A) Intentionally exposes the person's genitals or buttocks to the guard; or

(B) Engages in sexual contact as defined in § 39-13-501.

(2) For purposes of this subsection (c), "guard" means any sheriff, jailer, guard, correctional officer or other authorized personnel charged with the custody of the person.

(3) Notwithstanding subsection (b), a violation of this subsection (c) is a Class A misdemeanor.

(d) This section does not apply to a mother who is breastfeeding her child in any location, public or private.

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 13, Part 5, is amended by adding the following as a new section:

39-13-517.

(a) As used in this section:

(1) "Nudity" or "state of nudity" means the showing of the bare human male or female genitals or pubic area with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of the areola, or the showing of the covered male genitals in a discernibly turgid state. Nudity or state of nudity does not include a mother in the act of nursing the mother's baby; and

(2)

(A)

(i) "Public place" means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public place includes, but is not limited to, streets, sidewalks, parks, beaches, business and commercial establishments, whether for profit or not-for-profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement, bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilized by any religious, social, fraternal or similar organizations.

(ii) For purposes of subdivision (b)(1) and (b)(2), "public place" includes a public restroom, whether single sex or not.

(B) Premises used solely as a private residence, whether permanent or temporary in nature, are not deemed to be a public place. Public place does not include an enclosed single sex functional showers, locker or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctors' offices, portions of hospitals and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein; nor does it include a person appearing in a state of nudity in a modeling class operated by a proprietary school, licensed by the state of Tennessee, a college, junior college, or university supported entirely or partly by taxation, or a private college or university where such private college or university maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by

taxation or an accredited private college. Public place does not include a private facility that has been formed as a family-oriented clothing optional facility, properly licensed by the state.

(b) A person commits the offense of public indecency who, in a public place, knowingly or intentionally:

(1) Engages in sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or other ultimate sex acts;

(2) Fondles the genitals of the person, or another person; or

(3) Appears in a state of nudity or performs an excretory function.

(c) A person does not violate subsection (b) if the person makes intentional and reasonable attempts to conceal the person from public view while performing an excretory function, and the person performs the function in an unincorporated area of the state.

(d) Public indecency is punishable as follows:

(1) A first or second offense is a Class B misdemeanor punishable only by a fine of five hundred dollars (\$500) unless otherwise specified under subdivision (3);

(2) Unless § 39-13-511(b)(3) applies, a third or subsequent offense is a Class A misdemeanor punishable by a fine of one thousand five hundred dollars (\$1,500) or confinement for not more than eleven (11) months and twenty-nine (29) days, or both; and

(3)

(A) Notwithstanding subdivisions (1) and (2), where the offense involves the defendant engaging in masturbation by self-stimulation, or the use of an inanimate object, on the property of any public school, private or parochial school, licensed day care center, or other child care facility, and the defendant knows or reasonably should know that a child

or children are likely to be present on the property at the time of the conduct, the offense is a Class E felony.

(B) Where a person is charged with a violation under subdivision (d)(3)(A), and the court grants judicial diversion under § 40-35-313, the court shall order, as a condition of probation, that the person be enrolled in a satellite-based monitoring program for the full extent of the person's term of probation, in a manner consistent with the requirements of § 40-39-302.

(e) If a person is arrested for public indecency while working as an employee or a contractor, the employer or principal may be held liable for a fine imposed by subdivision (d); provided, however, the employer may not be held liable under this section unless it is shown the employer knew or should have known the acts of the employee or contractor were in violation of this section.

(f) This section does not apply to any theatrical production that contains nudity performed in a theater by a professional or amateur theatrical or musical company that has serious artistic merit, provided that the production is not in violation of chapter 17, part 9 of this title.

(g) This section shall not affect in any fashion the ability of local jurisdictions or the state of Tennessee to regulate any activity where alcoholic beverages, including malt beverages, are sold for consumption.

SECTION 4. This act shall take effect July 1, 2012, the public welfare requiring it.